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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.01.2022
CORAM:

THE HONOURABLE MRS. JUSTICE S.KANNAMMAL

C.R.P.(PD). No. 2607 of 2017
and
CMP.No. 12433 of 2017

J.Ganesan ...Petitioner

Versus

S. Sundaravalli ...Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decreetal order in I.A.No. 159 of 2017 in I.A.No. 904 of 2016 in F.C.O.P.No. 34 of 2016 on the file of Family Court Judge, Erode, dated 08.06.2017.

For Petitioner : Ms.Simran
For M/s.V.Raghavachari

For Respondent : No Appearance

ORDER

The revision petitioner has filed F.C.O.P.No. 34 of 2016 under Section 13(1) (I) of the Hindu Marriage Act, against the respondent herein

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for a decree of divorce, by dissolving the marriage which was solemnized between the petitioner and the respondent on 10.11.2014 on the ground of cruelty and for costs.

2.On notice, the respondent/wife filed counter statement denying the allegations made in the FCOP and prayed for dismissal of the petition.

3.During the pendency of the FCOP.No.34 of 2016, both the parties were directed to appear before the Tamil Nadu Mediation and Conciliation Centre for family councelling on 21.09.2016. On that day, the petitioner/husband did not appear and therefore, his absence was recorded by the Mediation Centre and consequently, the FCOP.No.34 of 2016 was dismissed for default on 21.09.2016. Subsequently, the revision petitioner herein has filed an application in I.A.No.904 of 2016 in FCOP.No. 34 of 2016 under Order 9 Rule 9 r/w Sec.151 of CPC., to restore the above OP, which was dismissed for default on 21.09.2016. The said application in I.A.No.904 of 2016 was allowed on 20.12.2016 with costs of Rs.5,000/- payable to the respondent/wife.

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4. According to the revision petitioner, the amount of Rs.5,000/- has to be paid on or before 30.12.2016 and he has paid the sum of Rs.5,000/- to his counsel. However, on 30.12.2016, the Presiding Officer was on leave and when the case was taken up for hearing on 11.01.2017, the revision petitioner did not appear on the ground that his mother passed away. Therefore, on 11.01.2017, the application in I.A.No.904 of 2016 was once again dismissed. To set aside the order of dismissal in I.A.No. 904 of 2016, the petitioner has filed an I.A.No.159 of 2017 stating the above reasons. I.A.No.159 of 2017 was also allowed by the Family Court with a direction to pay a further sum of Rs.5,000/- towards costs. Aggrieved by the direction to pay a further sum of Rs.5,000/- towards costs, the revision petitioner has filed this revision.

5.The learned counsel for the revision petitioner would submit that the petitioner has given a *bona fide* reason for his non-appearance before the Family Court. In fact, as directed by the Family Court in FCOP.No. 34 of 2016, he has paid Rs.5,000/- to his counsel and he in turn has paid the amount to the learned counsel for the respondent. While so, for setting aside the order passed in I.A.No.904 of 2016 the Court below is not

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justified in awarding another sum of Rs.5,000/- payable by the revision petitioner, as it would cause prejudice to him. Above all it is stated that the revision petitioner is only working as "Coolie" on daily wage basis and he could not offer a further sum of Rs.5,000/-. Therefore, he prayed for setting aside the order dated 08.06.2017 passed in I.A.No.159 of 2017 in I.A.No. 904 of 2016 in FCOP.No. 34 of 2016 by allowing this revision petition.

6. In spite of notice, the respondent/wife did not appear either in person or through her pleader.

7. This Court carefully considered the grounds raised by the petitioner and also the submissions made by the learned counsel for the petitioner.

8. It is stated that due to illness, the revision petitioner could not appear for the counselling on 21.09.2016 and therefore, the FCOP.No.34 of 2016 filed by him, was dismissed. To set aside the order of dismissal, he filed an I.A.No. 904 of 2016 and it was allowed subject to payment of

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costs. Though the petitioner has paid a sum of Rs.5,000/- to his counsel, the learned counsel for the respondent obtained an endorsement, when the matter was posted on 11.01.2017, the revision petitioner did not appear before the trial court. According to the revision petitioner, due to sudden demise of his mother, he did not appear before the trial Court. Therefore, to set aside the order of dismissal passed in I.A.No.904 of 2016, he filed the instant I.A.No.159 of 2017 in which, once again the learned Family Court Judge allowed the petition with costs of Rs.5,000/- payable to the other side. According to the learned counsel for the petitioner, when the petitioner already paid a sum of Rs.5,000/- as costs in I.A.No.904 of 2016, directing him to pay another sum of Rs.5,000/- as a condition precedent for allowing the I.A.No.159 of 2017 is unjust. I find force in such submission for the counsel for the petitioner. When the court below has already allowed the IA.No. 904 of 2016 by imposing costs of Rs.5,000/-, the present order passed in I.A.No.159 of 2017 with costs of Rs.5,000/- required to be interfered with. Accordingly, the order passed in I.A.No. 159 of 2017 is hereby set aside and FCOP.No.34 of 2016 is ordered to be restored on file. The Family Court is directed to proceed further in FCOP.No. 34 of 2016 pending on the file of Family Judge, Erode, in

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accordance with law.

9. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

28.01.2022

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Index: Yes/ No
Speaking Order / Non-Speaking Order

To

The Family Court Judge, Erode.

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S.KANNAMMAL, J.,

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